

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 260 of 1996

and

SPECIAL CIVIL APPLICATION No 261 fo 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PUNYABHUMI VIKAS MANDAL

Versus

DEPUTY COLLECTOR

Appearance:

MS SHAKUNTALA V SONI for Petitioner
MR VM PANCHOLI, AGP for Respondent No. 1
MR HM BHAGAT for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/04/2000

ORAL JUDGEMENT

#. As in both these Special Civil Applications, not only the parties are common but identical legal issues are raised, the same are taken up for hearing and are being disposed of by this common order. The facts of the case are taken from Special Civil Application No.260 of 1996.

#. The petitioner purchased the property in dispute by sale deed dated 20/6/86 from Pratimaben Shivabhai Patel. Show cause notice dated 29/3/92 issued by the respondent No.1 to the petitioner to show cause as to why the value of the said property should not be taken as 3,79,000/= instead of Rs.3,28,900/=. The petitioner filed reply to that show cause notice dated 24.6.92. The respondent No.1 decided the matter and confirmed the value of the document for Rs.3,79,000/= and directed the petitioner to pay Rs.4,000/= by way of deficit stamp, Rs.250/= towards penalty and Rs.50/= for not filing form No.1. Against this order, the petitioner filed the appeal before the respondent No.2, which was came to be rejected under the impugned order hence this Special Civil Application.

#. The learned counsel for the petitioner raised one of the contentions that the initiation of the proceedings for recovery of the deficit stamp duty of the document after six years of the register thereof is barred by limitation. It is contended that this action could have been initiated within two years from the date of the registration. It is submitted that this point was very specifically taken by the petitioner in memo appeal but the appellate authority while deciding the appeal even has not made reference to this contention. The learned counsel for the respondent on the other hand contended that merely raising this point in the memo of appeal is not sufficient. In case during the course of arguments the point raised in that memo of appeal is not pressed even it will be taken to be a case where the party concerned has given up that contention. Lastly it is contended that in the Special Civil Application, this point has not been specifically raised.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. It is true that from the impugned order of the appellate authority, I do not find that this point has been raised. It is also true to contend that in the memo of the Special Civil Application, this point has been specifically raised by the petitioner. This question pertains to question of limitation and it is in the facts of this case is purely a question of law. However, in

this case as the Appellate authority has not decided this point, I do not consider it to be appropriate to permit the petitioner to raise this question and the Appellate Authority to decide this point.

#. In the result, both these Special Civil Applications succeed and the same are allowed and the order dated 24/6/1992 passed by the respondent No.1 is quashed and set aside. The learned appellate authority has to decide appeals of the petitioners afresh on merits in accordance with law after considering the question of limitation as raised by the petitioner in the memo of appeal. Rule is made absolute accordingly. No order as to costs.

(S.K.Keshote, J.)

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